CARL DWAYNE SIMMONS
PLAINTIFF/PETITIONER/MOVANT'S NAME

CDC # E-96088
PRISON NUMBER

Calipatria State Prison, Calipatria (CAL)
PLACE OF CONFINEMENT

7018 Blair Rd, PO Box 5001, Calipatria 92233-5001
ADDRESS

RECEIVED
JUL 25 2000
INMATE APPEALS

FILED
AUG - 6 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY RM DEPUTY

United States District Court
Southern District Of California

CARL DWAYNE SIMMONS,
Plaintiff/Petitioner/Movant

v.

Terhune, C.A. "CAI".... Dir.,
Defendant/Respondent

Civil No. 08-1127 W [POR]
(TO BE FILLED IN BY U.S. DISTRICT COURT CLERK)

MOTION AND DECLARATION UNDER PENALTY OF PERJURY IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, CARL DWAYNE SIMMONS,
declare that I am the Plaintiff/Petitioner/Movant in this case. In support of my request to proceed without prepayment of fees or security under 28 U.S.C. § 1915, I further declare I am unable to pay the fees of this proceeding or give security because of my poverty, and that I believe I am entitled to redress.

In further support of this application, I answer the following question under penalty of perjury:

1. Are you currently incarcerated? ☒ Yes ☐ No (If "No" go to question 2)
   If "Yes," state the place of your incarceration Calipatria State Prison, Calipatria (CAL)
   Are you employed at the institution? ☐ Yes ☒ No
   Do you receive any payment from the institution? ☐ Yes ☒ No
   [Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of the trust account statement from the institution of your incarceration showing at least the last six months transactions.]

2. Are you currently employed? ☐ Yes ☒ No

   a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.____________________

   b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer. Date: 3/20/98. Category V: $226,000 base fee TO: Carl Dwayne Simmons, E-96088 Calif. Correctional Institution P.O. Box 1902-B, End of Highway 202 Tehachapi, CA Phone: ( ) ZIP: 93581

3. In the past twelve months have you received any money from any of the following sources?:

   a. Business, profession or other self-employment ☐ Yes ☒ No
   b. Rent payments, royalties interest or dividends ☐ Yes ☒ No
   c. Pensions, annuities or life insurance ☐ Yes ☒ No
   d. Disability or workers compensation ☐ Yes ☒ No
   e. Social Security, disability or other welfare ☐ Yes ☒ No
   e. Gifts or inheritances ☐ Yes ☒ No
   f. Spousal or child support ☐ Yes ☒ No
   g. Any other sources ☐ Yes ☒ No

   If the answer to any of the above is "Yes" describe each source and state the amount received and what you expect you will continue to receive each month.____________________

4. Do you have any checking account(s)? ☐ Yes ☒ No

   a. Name(s) and address(es) of bank(s):____________________
   b. Present balance in account(s):____________________

5. Do you have any savings/IRA/money market/CDS' separate from checking accounts? ☐ Yes ☒ No

   a. Name(s) and address(es) of bank(s):____________________
   b. Present balance in account(s):____________________

6. Do you own an automobile or other motor vehicle? ☐ Yes ☒ No

   a. Make:__________ Year:__________ Model:__________
   b. Is it financed? ☐ Yes ☐ No
   c. If so, what is the amount owed?____________________

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or other valuable property?
☐ Yes ☒ No
If "Yes" describe the property and state its value.

8. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support. 'N/A.'

9. List any other debts (current obligations, indicating amounts owed and to whom they are payable): 'N/A.'

10. List any other assets or items of value (specify real estate, gifts, trusts inheritances, government bonds, stocks, savings certificates, notes, jewelry, artwork, or any other assets [include any items of value held in someone else's name]): 'N/A.'

12. If you answered all of the items in #3 "No," and have not indicated any other assets or sources of income anywhere on this form, you must explain the sources of funds for your day-to-day expenses. Category D: $129,000 base sum ($105,000 base amount for legal fees; $24,000 base amount for expenses). A matter that is expected to require substantial additional investigation and services of experts, and to consume 7 or more hearing days.

I declare under penalty of perjury that the above information is true and correct and understand that a false statement herein may result in the dismissal of my claims.

07/29/08
DATE

Mr. Carl D. Simmons Jr.
SIGNATURE OF APPLICANT

If you are a **prisoner** you must have an officer from your institution provide this official certificate as to the amount of money in your prison account. There are no exceptions to this requirement.

PRISON CERTIFICATE
(Incarcerated applicants only)
(To be completed by the institution of incarceration)

I certify that the applicant CARL DWAYNE SIMMONS,
(NAME OF INMATE)

E-96088,
(INMATE'S CDC NUMBER)

has the sum of $__________ on account to his/her credit at __________

__________.
(NAME OF INSTITUTION)

I further certify that the applicant has the following securities __________

to his/her credit according to the records of the aforementioned institution. I further certify that **during the past six months** the applicant's ***average monthly balance*** was $ __________,

and the ***average monthly deposits*** to the applicant's account was $__________.

ALL PRISONERS ***MUST*** ATTACH A CERTIFIED COPY OF THEIR TRUST ACCOUNT STATEMENT SHOWING TRANSACTIONS FOR THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT PER 28 U.S.C. § 1915(a)(2).

__________ DATE

__________ SIGNATURE OF AUTHORIZED OFFICER OF INSTITUTION

CONFIDENTIAL ATTORNEY-CLIENT MATERIAL

__________ OFFICER'S FULL NAME (PRINTED)

__________ OFFICER'S TITLE/RANK

TRUST ACCOUNT WITHDRAWAL AUTHORIZATION
(Incarcerated applicants only)

(This form **MUST** be completed by the prisoner requesting to proceed in forma pauperis. An incomplete "Trust Account Withdrawal Authorization Form," or "Prison Certificate" will result in automatic denial of the prisoner's request to proceed in forma pauperis.)

I, CARL DWAYNE SIMMONS E-96088, request and authorize the agency holding me in
(Name of Prisoner/ CDC No.)
custody to prepare for the Clerk of the United States District Court for the Southern District of California, a certified copy of the statement for the past six months of my trust fund account (or institutional equivalent) activity at the institution where I am incarcerated.

I further request and authorize the agency holding me in custody to calculate and disburse funds from my trust fund account (or institutional equivalent) pursuant to any future orders issued by the Court relating to this civil action pursuant to the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Title VIII, §§ 801-10, 110 Stat. 1321 (1996).

This authorization is furnished in connection with a civil action filed in the Southern District of California, and I understand that, pursuant to 28 U.S.C. §§ 1914 and 1915(b)(1), the total amount of filing fees for which I am obligated is either ☐ $350 (civil complaint) or ☒ $5 (habeas corpus petition) (check one). I also understand that this fee will be debited from my account regardless of the outcome of this action. This authorization shall apply to any other agency into whose custody I may be transferred.

07/29/08
DATE

⊗ Mr. Carl D. Simmons Jr.
SIGNATURE OF PRISONER

Form 11. Certificate of Compliance Pursuant to Circuit Rules 35-4 and 40-1

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached petition for panel rehearing/petition for rehearing en banc/answer is: (check applicable option)

____ Proportionately spaced, has a typeface of 14 points or more and contains __________ words (petitions and answers must not exceed 4,200 words).

or

____ Monospaced, has 10.5 or fewer characters per inch and contains _______ words or _________ lines of text (petitions and answers must not exceed 4,200 words or 390 lines of text).

or

____ In compliance with Fed. R. App. 32(c) and does not exceed 15 pages.

____
Signature of Attorney or
Unrepresented Litigant

LEGAL MAIL

DAVID Y. STANLEY

MAIL CARD (CDC FORM 119) *10-Apr-00*

DATE	CDC#	NAME	SENDER
06/28/99	E96088	SIMMONS	CLERK, US DIST COURT, NORTHERN DIST., SAN FRAN CA 94102
06/28/99	E96088	SIMMONS	MO CO SUPERIOR COURT, SALINAS CA 93902
08/26/99	E96088	SIMMONS	CHIEF INMATE APPEALS SACTO CA 94283
09/14/99	E96088	SIMMONS	CLERK, US DIST COURT, NORTHERN DIST., SAN FRAN CA 94102
10/07/99	E96088	SIMMONS	OFFICE OF THE CLERK, U.S. DIST. COURT, NORTH. DIST., SAN FRANCISCO, CA 94102
10/14/99	E96088	SIMMONS	MO CO SUPERIOR COURT, SALINAS CA 93902
10/15/99	E96088	SIMMONS	CLERK, US DIST COURT, NORTHERN DIST., SAN FRAN CA 94102
10/20/99	E96088	SIMMONS	STATE BOARD OF CONTROL, SACTO CA 95812
10/20/99	E96088	SIMMONS	CLERK, US DIST COURT, SAN FRAN CA 94102
11/05/99	E96088	SIMMONS	OFFICE OF THE CLK, US DIST COURT, NRTH DIST, SF, CA 94102 (PREV SENT TO CTC ON 11/4 RESENT TO D2 ON 11/5)
11/08/99	E96088	SIMMONS	STATE BOARD OF CONTROL, SACTO CA 95812
11/09/99	E96088	SIMMONS	STATE BOARD OF CONTROL, SACTO CA 95812
11/15/99	E96088	SIMMONS	SHERRI L PEDERSEN, EXEC. OFFICER/JURY COMMISSIONER, MO CO SUPERIOR COURT, SALINAS CA 93902
12/03/99	E96088	SIMMONS	CALIF. BOARD OF CONTROL, SACTO CA 95812
12/13/99	E96088	SIMMONS	CLERK, U.S. DISTRICT COURT NORTHERN DIST. SAN FRANCISCO, CA. 94102
12/13/99	E96088	SIMMONS	CLERK, U.S. DISTRICT COURT NORTHERN DIST. SAN FRANCISCO, CA. 94102
12/21/99	E96088	SIMMONS	CHIEF,INMATE APPEALS, DPT OF CORR., SACTO CA 94283(FWD TO D1-129 ON 12/22/99)
12/22/99	E96088	SIMMONS	CHIEF INMATE APPEALS SACTO CA 94283
12/22/99	E96088	SIMMONS	US DIST COURT SAN FRAN CA 94102

MAIL CARD (CDC FORM 119) *10-Apr-00*

DATE	CDC#	NAME	SENDER
01/07/00	E96088	SIMMONS	US DIST COURT SAN FRAN CA 94102
01/18/00	E96088	SIMMONS	REGIONAL DIVISION L.A. CA 90010

DATE	CDC#	NAME	SENDER
11/02/01	E96088	SIMMONS	ATTY ALLAN GOLDBERG, MONTEREY CA 93940
11/19/01	E96088	SIMMONS	ATTY ALLAN GOLDBERG, MONTEREY CA 93940
09/30/04	E96088	SIMMONS	SUPERIOR COURT; MONTEREY, CA 93940
10/18/04	E96088	SIMMONS	SUPERIOR CRT OF CALI. SALINAS CA, 93901
11/19/04	E96088	SIMMONS	CHIEF INMATE APPEALS SACRAMENTO CA 94283
12/08/04	E96088	SIMMONS	CHIEF, INMATE APPEALS; SACTO, CA 94283
12/20/04	E96088	SIMMONS	SUPERIOR COURT; MONTEREY, CA 93940
01/14/05	E96088	SIMMONS	SUPERIOR COURT; MONTEREY, CA 93940
08/11/05	E96088	SIMMONS	SUPERIOR COURT; SALINAS, CA 93901 (FWD TO D6-122 ON 08-19-05)
08/16/05	E96088	SIMMONS	SUPERIOR COURT; SALINAS, CA 93901
08/19/05	E96088	SIMMONS	SUPERIOR COURT; SALINAS, CA 93901 (PREV SENT TO D7-101 ON 08-11-05)
09/09/05	E96088	SIMMONS	SUPERIOR COURT; SALINAS, CA 93901
10/26/05	E96088	SIMMONS	SUPERIOR CRT. MONTEREY CA 93940
11/01/05	E96088	SIMMONS	SUPERIOR CRT. MOPNTEREY CA 93940
01/17/06	E96088	SIMMONS	GOV'T CLAIMS; SACTO, CA 95812 (FWD TO D8)
01/17/06	E96088	SIMMONS	SUPERIOR COURT; SALINAS, CA 93901
01/25/06	E96088	SIMMONS	GOV'T CLAIMS; SACTO, CA 95812 (PREV SENT TO D1 ON 01-17-06)
01/27/06	E96088	SIMMONS	SUPERIOR COURT; MONTEREY, CA 93940
01/30/06	E96088	SIMMONS	SUPERIOR COURT; SALINAS, CA 93901
02/10/06	E96088	SIMMONS	SUPERIOR COURT; SALINAS, CA 93901
02/15/06	E96088	SIMMONS	SUPERIOR COURT; MONTEREY, CA 93940
02/23/06	E96088	SIMMONS	SUPERIOR COURT LISA GALDOS; SALINAS, CA 93901

DATE	CDC#	NAME	ADDRESSEE
3/15/06	E96088	SIMMONS	DEPT OF JUSTICE; WASHINGTON, DC 20530
3/28/06	E96088	SIMMONS	D.O.J. WASHINGTON DC 20530

STATE OF CALIFORNIA

CDC 1858 (2/97) ~~3b(50).~~

DEPARTMENT OF CORRECTIONS

RIGHTS AND RESPONSIBILITY STATEMENT

The California Department of Corrections has added departmental language (shown inside brackets, in non-boldface type) for clarification purposes.

Pursuant to Penal Code 148.6, anyone wishing to file an allegation of misconduct by a departmental peace officer must read, sign and submit the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

COMPLAINANT'S PRINTED NAME	COMPLAINANT'S SIGNATURE	DATE SIGNED	
INMATE/PAROLEE PRINTED NAME	INMATE/PAROLEE'S SIGNATURE	CDC NUMBER	DATE SIGNED
RECEIVING STAFF'S PRINTED NAME "L. S.," "Ⓡ"	RECEIVING STAFF'S SIGNATURE "seal" "CCW Approved" "L.S."	DATE SIGNED "seal." ~~[State Bar]~~	

DISTRIBUTION:
ORIGINAL
PUBLIC - Institution Head/Parole Administrator
Inmate/Parolee - Attach to CDC form 602
Employee - Institution Head/Parole Administrator
COPY - Complainant